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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,469	09/22/2005	Frank J Viola	2895 PCT US	4418
50855	7590	09/14/2007	EXAMINER	
COVIDIEN			LOW, LINDSAY M	
60 MIDDLETOWN AVENUE			ART UNIT	PAPER NUMBER
NORTH HAVEN, CT 06473			3721	
			MAIL DATE	DELIVERY MODE
			09/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/550,469	VIOLA, FRANK J
	<b>Examiner</b>	<b>Art Unit</b>
	Lindsay M. Low	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 September 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 13-16 is/are allowed.  
 6) Claim(s) 1-3,5-7,9-12 and 17-20 is/are rejected.  
 7) Claim(s) 4 and 8 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 22 September 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/22/2005</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The Information Disclosure Statement (IDS) submitted on September 22<sup>nd</sup>, 2005 is acknowledged. The IDS meets the requirements of 37 CFR 1.97 and 1.98. Therefore, the references therein have been considered.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "motorized mechanism" of claims 11 and 12 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

3. The disclosure is objected to because of the following informalities: on page 11 line 18, the "piston rod end" is referred to with number 328 when it should be 338. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-7, 9, 11-12, 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Green et al (5,645,209).

Green discloses the same invention including a handle (Fig. 91) having an elongate tubular member, an end effector, a driver 1042, an energy storage mechanism (Fig. 94), and an actuation mechanism to control the rate of release of the stored energy. The energy storage mechanism includes a spring 1057 and a piston 1023 having a piston rod as can be seen in the figures. An energizing handle 1020 is mounted on the handle and compresses the spring 1057. The actuation mechanism

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includes a fluid and a valve 1027 to control the flow of the fluid. Note that the pneumatic system is considered a motorized mechanism as it imparts motion to the driver and is a damping system since the amount of force on the trigger controls the rate of release of the stored energy. In addition, note that the actuation mechanism includes a brake system such as the linkages shown in Fig. 94 as the device cannot release energy unless the linkages are forced against their biased directions.

6. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Kerrigan (5,098,004).

Kerrigan discloses the same invention including a handle 12 having an elongate tubular member 14, an end effector 20, a driver 36, and an energy storage and actuation mechanism 24, 26. The actuation mechanism includes a flywheel 26, which controls the rate of release of the stored energy by the energy storage mechanism 24.

#### ***Allowable Subject Matter***

7. Claims 4 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 13-16 are allowable over the prior art of record.

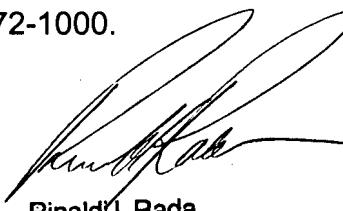
***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hawkins, Fox, Yates, Green, Schulze et al, Bryan, Klieman et al, and Tormala et al are cited to show similar inventions.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsay M. Low whose telephone number is 571-272-1196. The examiner can normally be reached on Monday thru Friday 7:30 to 5:00.
11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LML



9/11/2007



Rinaldi Rada  
Supervisory Patent Examiner  
Group 3700